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## Memorandum

**To:** Brisbane Mayor & City Council

**From:** Michael Roush, City Attorney  
Teresa L. Stricker, Deputy City Attorney 

**Date:** February 26, 2015

**Re:** Amendment to Noise Control Ordinance

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### INTRODUCTION

The Health and Safety Subcommittee recommends that the City Council amend the City's existing Noise Control Ordinance to assist police officers in curbing elevated noise levels that fall within the City's jurisdiction to regulate.<sup>1</sup>

The current Noise Control Ordinance is codified in Chapter 8.28 of the City's Municipal Code. A copy of the entirety of Chapter 8.28 is attached to this report.

### RECOMMENDATION

Adopt Ordinance Number 594 to amend Chapter 8.28 of the City's Municipal Code as detailed below.

### SUMMARY

#### A. Subcommittee Recommendations

The Subcommittee asked staff to recommend amendments to the City's Noise Control Ordinance that would assist police officers in curbing elevated noises.

Staff reported to the Subcommittee that a significant challenge the police department faces in handling noise complaints is the amount of officer time required to establish a violation

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<sup>1</sup> The Subcommittee also raised concerns about excessive noise created when motorcycles accelerate to get up a hill. The California Vehicle Code regulates vehicle muffler requirements and City police officers currently enforce these state laws. State law preempts the City from establishing additional regulations in this area.



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under the existing ordinance. When there is a noise complaint, officers must take decibel readings and compare those readings to ambient noise level readings the officers establish for the location at a comparable time of day. To reduce the amount of officer time needed to establish a noise violation, staff recommended several amendments to the current ordinance to the Subcommittee. The Subcommittee recommends that the Council adopt each staff's recommendations as described below.

### **1. Reduce Time Periods for Establishing Certain Noise Level Violations**

First, the Subcommittee recommends that Council amend the Noise Control Ordinance to reduce the time period for establishing certain noise level violations.

To constitute a violation under the current ordinance, the challenged noise level must remain at least 10 decibels above the ambient noise level for a cumulative period of 15 minutes in any hour, or at least 20 decibels above the ambient noise level for a cumulative period of 3 minutes in any hour. (BMC §§8.28.030, 8.28.040.) These standards apply in both residential and commercial/industrial zones.

Based on the Police Chief's recommendations, the Subcommittee recommends that the Council amend the ordinance to reduce the elevated cumulative noise requirement for noises that are at least 10 decibels above the ambient noise level from 15 to 10 minutes. The Police Chief reports that requiring noise levels to remain elevated for a total of 15 minutes unnecessarily takes officers from other duties for a protracted period of time while they take noise level readings. The Police Chief further reports that officers often determine that there is no violation under the current ordinance because the elevated noise levels do not last long enough to satisfy the cumulative 15 minute requirement. According to the Police Chief, this is often a reason that complaints about noise levels do not result in citations.

The Police Chief further reported that the 3 minute cumulative requirement for noise levels at 20 decibels or above the ambient noise level generally works well. She suggested, however, that the ordinance be amended to establish that extremely high noise levels – those at 30 decibels or more above ambient noise levels – constitute violations of the ordinance without a requirement that the elevated noise level continue for any specific period of time. The Subcommittee recommends this amendment.



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## 2. Reduce Time Period to Establish Ambient Noise Levels

Second, the Subcommittee recommends that Council amend the noise ordinance to reduce the time period for establishing ambient noise levels.

As explained above, when responding to noise complaints, police officers must take decibel readings of the noise source that is the source of the complaint and compare those readings to ambient noise levels. To establish a comparable ambient noise level, officers often must come back to a nearby location at a similar time of the day when the challenged noise source is silent to take additional noise level readings.

One way to significantly reduce the officer time required to respond to noise complaints would be to establish pre-set ambient noise levels. Under that approach, officers would not need to take ambient noise level readings for each noise complaint. Rather, they would take only decibel readings of the offending noise source and then simply compare those readings to the pre-established ambient noise levels.

The City's general plan sets forth noise levels for various city locations as of 1992. (General Plan §X.9) Although these noise levels were appropriately derived for the purpose of establishing general plan policies related to noise, they are not specific enough for purposes of enforcing the City's noise ordinance. Indeed, the general plan noise levels reflect the *average* daily noise levels at various locations based on decibel readings taken at differing times of the day. Accordingly, those noise levels may not accurately reflect the ambient noise level at the specific time of day when an alleged noise violation occurred. Staff estimates that creating pre-set ambient noise levels that are specific enough to be used to enforce the noise ordinance would likely exceed \$25,000.

Given the high cost of pre-establishing defensible ambient noise levels, and the relative infrequency with which noise complaints occur in Brisbane, neither the Subcommittee nor staff recommends that the Council pursue this option at this time. Should noise complaints become a bigger issue in the future, and thus impose a greater time burden on the City's police force, the Council may revisit whether to establish pre-set ambient noise levels.

For now, to further reduce the officer time required to respond to noise complaints, the Subcommittee recommends, based on the Police Chief's recommendation, that the Council amend the ordinance to reduce the time period during which officers must take noise level readings to obtain an ambient noise level from 15 to 10 minutes.



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### **3. Exclude Only “Exceptional” Isolated Identifiable Noises from Ambient Noise Levels.**

Under the current ordinance, officers must establish local ambient noise levels “without inclusion of noise from isolated identifiable sources.”

Based on staff’s recommendation, the Subcommittee recommends that the Council amend the ordinance so that only noises from “exceptional” isolated identifiable sources are excluded from the ambient noise level readings. This change would allow officers to factor into the ambient noise level noises that are typically part everyday life at given times of the day – such as noise from rush hour traffic, children dismissed from school or an air conditioning unit – while continuing to exclude noises that are truly exceptional – such as noise from an emergency vehicle, backfiring car or particularly low-flying aircraft.

The Police Chief reports that, as a practical matter, officers often have no way of excluding the noise from many everyday isolated identifiable sources when trying to obtain ambient noise level readings without requiring officers to return to the location at a different time of day. By amending the ordinance to exclude only “exceptional” isolated and identifiable noise sources from ambient noise levels, officers may be able to establish the ambient noise level without returning to the location at another time. That change in the ordinance would also eliminate the risk that an officer inadvertently attributes everyday background noises to an individual cited with violating the noise ordinance rather than to their true source.

#### **B. Additional Non-Substantive Amendments.**

Under the current ordinance, officers are required to measure noise levels using a method of measuring decibel levels that weights sounds by frequency to account for characteristics of human hearing. Currently, however, the ordinance does not refer to these measurement standards in a single, consistent fashion, and contains some confusing definitions.

We recommend that Council adopt a variety of amendments to make the ordinance internally consistent and clearer, and to correct certain typographical errors. None of the “clean-up” amendments would change the way the Noise Control Ordinance is currently enforced. The Subcommittee did not consider any of these non-substantive amendments.

## Chapter 8.28 - NOISE CONTROL

### Sections:

#### 8.28.010 - Declaration of policy.

It is declared to be the policy of the city that the peace, health, safety and welfare of its citizens require protection from excessive, unnecessary and unreasonable noises from any and all sources in the community subject to its police power. It is the intention of the city to control the adverse effects of such noise sources on the citizens under any condition of use, especially those conditions of use which have the most severe impact upon any person or neighborhood.

(Ord. 332 § 1(part), 1987).

#### 8.28.020 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context or the provision clearly requires otherwise:

- A. "Ambient noise" means the all-encompassing noise associated with a given environment, usually being a composite of sounds from many sources, near and far. Local ambient is the noise level obtained when the noise level is averaged over a period of fifteen minutes without inclusion of noise from isolated identifiable sources at the location and time of day near that at which a comparison is to be made, and when the noise source at issue is silent. However, for purposes of this chapter, in no case shall the local ambient be considered or determined to be less than:

1. Thirty-five (35) dBA for interior noise in Section 8.28,030;
2. Forty-five (45) dBA in all other sections of this chapter.

If the local ambient is largely composed of noise produced by other individual identifiable sources which would otherwise be operating continuously during the fifteen minute measurement period and contributing significantly to the ambient sound level, determination of the local ambient shall be accomplished with these separate identifiable noise sources silent.

- B. "Commercial purpose" means and includes the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, any goods or any services or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition or event or for the purpose of demonstrating such sound equipment.
- C. "Decibel" means a unit which is one-tenth of a dimensionless unit for expressing the ratio of two values of a power, the number of those dimensionless units being the logarithm to the base ten of the power ratio.
- D. "Emergencies" means essential activities necessary to restore, preserve, protect or save lives or property from imminent danger, loss or harm.
- E. "Noise level" means the maximum continuous sound level or repetitive peak level produced by a source or group of sources as measured with a precision sound level meter using the "A" weighting scale, and the meter response function set to "slow."
- F. "Noncommercial purpose" means the use, operation or maintenance of any sound equipment for other than a commercial purpose. The term "noncommercial purpose" means and includes, but shall not be limited to, philanthropic, political, patriotic and charitable purposes.

- G. "Type 2 general purpose sound level meter" means a device for measuring sound levels in decibel units within the performance specifications in the American National Standards Institute Standard S1.4, "Specification for Sound Level Meters" or successor reference.
- H. "Property plane" means a vertical plane, including the property line, which determines the property boundaries in space of the parcel of property over or from which the sound in question is audibly transmitted.
- I. "Receiver" means a person or persons who question the level of sound transmitted from an identifiable source.
- J. "Sound-amplifying equipment" means any machine or device for the amplification of the human voice, music or any other sound. This does not include standard automobile radios, stereos, or other sound-amplifying equipment installed in the vehicle when used or heard only by the occupants of the vehicle in which the vehicular sound-amplifying equipment is installed. The term "sound-amplifying equipment," as used in this chapter, shall not include warning devices on authorized emergency vehicles or horns or other warning devices of any vehicle used only for traffic safety purposes.
- K. "Sound level," expressed in decibels (dB), means a logarithmic indication of the ratio between the acoustic energy present at a given location and the lowest amount of acoustic energy audible to sensitive human ears and weighted by frequency to account for characteristics of human hearing, as given in the American National Standards Institute Standard S1.1, "Acoustic Technology," paragraph 2.9, or successor reference. All references to dB in this chapter utilize the A-level weighted scale, abbreviated dBA, measured as set forth in this chapter.
- L. "Vehicle" means any device by which any person or property may be propelled, moved, driven or drawn upon a public street or highway or on any private property.

(Ord. 332 51(part), 1987).

#### 8.28.030 - Noise levels for residential zoning districts.

- A. No person shall cause, produce, suffer or allow to be produced by any machine, animal or device or any combination of same, in a single-family residential zoning district, a noise level more than ten (10) dB above the local ambient to any receiver for a cumulative period of more than fifteen (15) minutes in any hour, or a noise level more than twenty (20) dB above the local ambient to any receiver for a cumulative period of more than three (3) minutes in any hour.
- B. No person shall cause, produce, suffer or allow to be produced by any machine, animal or device or any combination of same, in a multi-family residential zoning district, a noise level more than ten (10) dB above the local ambient three (3) feet from any wall, floor or ceiling inside any dwelling unit on the same property, except within the dwelling unit in which the noise source or sources may be located to any receiver for a cumulative period of more than fifteen (15) minutes in any hour, or a noise level more than twenty (20) dB above the local ambient to any receiver for a cumulative period of more than three (3) minutes in any hour.

(Ord. 332 § 1(part). 1987).

#### 8.28.040 - Noise level for commercial and industrial zoning districts.

No person shall cause, produce, suffer or allow to be produced by any machine, animal or device or any combination of same, in any commercial or industrial zoning district, a noise level more than ten (10) dB above the local ambient to any receiver for a cumulative period of more than fifteen (15) minutes in any hour, or a noise level more than twenty (20) dB above the local ambient to any receiver for a cumulative period of more than three (3) minutes in any hour.

(Ord. 332 § 1(part), 1987).

#### 8.28.050 - Exemptions.

The following are exempted from the noise level restrictions set out in Sections 8.28.030 and 8.28.040:

- A. Emergencies;
- B. School bands, school athletic and school entertainment events;
- C. Activities conducted on parks, public play grounds and school grounds provided such parks, playgrounds and school grounds are owned and operated by a public entity;
- D. Any activity to the extent regulation thereof has been preempted by state or federal law.

(Ord. 332 § 1(part), 1987).

#### 8.28.060 - Construction activities.

Except as set forth in Section 8.28.050A, notwithstanding any other provision of this chapter, construction shall be allowed only between the hours of seven (7:00) a.m. and seven (7:00) p.m. on weekdays and nine (9:00) a.m. to seven (7:00) p.m. on weekends and holidays. Construction, alteration or repair activities which are authorized by a valid city permit shall be allowed if they meet at least one of the following noise limitations:

- A. No individual piece of equipment shall produce a noise level exceeding eighty-three (83) dBA at a distance of twenty-five (25) feet from the source thereof. If the device or other source is housed within a structure on the property, the measurement shall be made outside the structure, but at a distance as close to the equipment or source as possible.
- B. The noise level at any point outside of the property plane of the project shall not exceed eighty-six (86) dBA.

(Ord. 332 § 1(part), 1987).

#### 8.28.070 - Amplified sound.

- A. It shall be unlawful for any person, other than personnel of law enforcement or governmental agencies, to install, use or operate within the city a loudspeaker or sound-amplifying equipment in a fixed or movable position or mounted upon any sound truck for the purpose of giving instructions, directions, talks, addresses, lectures or transmitting music to any persons or assemblages of persons in or upon any street, alley, sidewalk, park or public property or any open space generally available to the public, without first filing a registration statement and obtaining approval thereof as set forth in this section.
- B. Every user of sound-amplifying equipment shall file a registration statement with the planning director fifteen (15) days prior to the date on which the sound-amplifying equipment is intended to be used, which statement shall contain the following information:
  - 1. The name, address and telephone number of both the owner and the user of the sound equipment; the date or dates proposed and the hours of operation;
  - 2. The maximum sound-producing power of the sound-amplifying equipment which shall include the wattage to be used, the volume in decibels of sound to be produced, the approximate distance for which sound will be audible from the sound-amplifying equipment and a general description of the sound amplifying equipment to be used;
  - 3. The license and motor number if a sound truck is to be used;
  - 4. Whether such equipment will be used for commercial or noncommercial purposes.
- C. The planning director shall return to the applicant an approved certified copy of the registration statement unless he/she finds that:
  - 1. The conditions of the motor vehicle movement are such that in the opinion of the planning director, use of the equipment would constitute a detriment to traffic safety; or
  - 2. The conditions of pedestrian movement are such that use of the equipment would constitute a detriment to traffic safety; or

3. The registration statement required reveals that the applicant would violate the provisions of this chapter or any other provision of this code or any other ordinance of the city.
- D. In the event the registration statement is disapproved, the planning director shall endorse upon the statement his/her reason for disapproval and return it forthwith to the applicant.
- E. Prior to the issuance of the registration statement, the applicant shall pay to the city a fee together with a deposit in such amounts as established from time to time by resolution of the city council. Such portion of the deposit as is not used or expended by the city in defraying the cost of monitoring noise produced by such activity or otherwise enforcing this chapter, shall be returned to the applicant at the expiration of such permit.
- F. The commercial and noncommercial use of sound-amplifying equipment shall be subject to the following regulations:
  1. The only sounds permitted shall be either music or human speech or both.
  2. Except on Sundays and legal holidays, the operation of sound amplifying equipment shall only occur between the hours of eight (8:00) a.m. and seven (7:00) p.m. On Sundays and legal holidays, the operation of sound-amplifying equipment for commercial purposes shall only occur between the hours of nine (9:00) a.m. and four (4:00) p.m., with no time limitation as to noncommercial amplification other than as may be required by F 5 of this subsection.
  3. The sound level emanating from sound-amplifying equipment shall not exceed fifteen (15) decibels above the ambient base noise level.
  4. Sound-amplifying equipment shall not be operated within two hundred feet of any church, school or hospital.
  5. In all events the volume of sound and the hours of operation shall be so controlled that the sound will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal sensitivity within the area of audibility.
- G. When the amplified sound is to be conducted in a public park, the provisions of Section 8.28.060 of this code shall also be applicable, the noise level standards of Section 8.28.060 having precedence over the standards set forth in subsection F of this section. Application for a group use permit under Section 8.28.020 of this code shall also constitute the registration statement required under this section.

(Ord. 332 § 1(part), 1987).

#### 8.28.080 - Exception permits.

If the applicant demonstrates to the satisfaction of the planning director that immediate compliance with the requirements of this chapter would be impractical or unreasonable, the planning director may issue a permit to allow exception from any or all of the provisions contained in this chapter, with appropriate conditions to minimize the public detriment caused by such exceptions. Any such permit shall be of as short duration as possible and shall be conditioned by a schedule for compliance and details of methods thereof in appropriate cases.

(Ord. 332 § 1(part), 1987).

#### 8.28.090 - Excessive noise—Standards to determine violation.

- A. Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to wilfully make or continue or cause to be made or continued, any loud, unnecessary or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivities residing in the area.
- B. The standards which shall be considered in determining whether a violation of this section exists shall include, but not be limited to, the following:
  1. The level of the noise;



2. Whether the nature of the noise is unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level of the background noise, if any;
5. The proximity of the noise to residential sleeping facilities;
6. The nature and zoning of the area within which the noise emanates or to which it is transmitted;
7. The density of the inhabitation of the area within which the noise emanates or to which it is transmitted;
8. The time of the day or night the noise occurs;
9. The duration of the noise;
10. Whether the noise is recurrent, intermittent or constant; and
11. Whether the noise is produced by a commercial or noncommercial activity.

(Ord. 332 § 1(part), 1987).

#### 8.28.100 - Violations—Enforcement—Penalties.

- A. The violation of any of the provisions contained in this chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.
- B. It shall be the duty of all public safety officers, and public works supervisors and the planning director to enforce the provisions of this chapter. Any permit or license of any type issued by any department or officer of the city, issued in conflict with the provisions of this chapter, shall be null and void.
- C. In addition to the penalties set forth for infraction offenses and the procedures for administrative enforcement and nuisance abatement, any noise level and its source in violation of any of the provisions of this chapter may be summarily abated, which may include, but is not limited to, removal, dismantlement and taking into custody the source of such noise, and in this regard, the confiscation of any machine or device used to violate any of the provisions of this chapter is authorized to be held for use as evidence in any proceeding that may be brought for such violation.

(Ord. 332 § 1(part), 1987).

(Ord. No. 554, § 20, 1-18-11)

## ORDINANCE NO. 594

### AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 8.28 OF THE MUNICIPAL CODE

**WHEREAS**, Chapter 8.28 of the Brisbane Municipal Code sets forth the City of Brisbane's Noise Control provisions to protect citizens from excessive, unnecessary and unreasonable noises in the community;

**WHEREAS**, the City Council finds that under the current the Noise Control provisions, police officers investigating noise complaints are taken from other duties for an unnecessarily protracted period of time;

**WHEREAS**, the City Council finds that noises that are a typical part of daily life at any given time of day should be properly considered background noises for purposes of determining whether a noise violation has occurred; and

**WHEREAS**, the City Council finds that exceptionally loud noises should be prohibited even if such noises do not repeat or continue for any specified period of time.

**The City Council of the City of Brisbane hereby ordains as follows:**

**SECTION 1: Chapter 8.28 of the Municipal Code is amended to read as follows:**

#### **§ 8.28.20 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context or the provision clearly requires otherwise:

- A. "Ambient noise" means the all-encompassing noise associated with a given environment, usually being a composite of sounds from many sources, near and far. Local ambient is the noise level obtained when the noise level is averaged over a period of ~~fifteen~~ ten (10) minutes without inclusion of noise from exceptional isolated identifiable sources at the location and time of day near that at which a comparison is to be made, and when the noise source at issue is silent. However, for purposes of this chapter, in no case shall the local ambient be considered or determined to be less than:
1. Thirty-five (35) dBA for interior noise in Section 8.28.030;
  2. Forty-five (45) dBA in all other sections of this chapter.

If the local ambient is largely composed of noise produced by other individual identifiable sources which would otherwise be operating continuously during the ~~fifteen~~-ten minute measurement period and contributing significantly to the ambient sound level, determination of the local ambient shall be accomplished with these separate identifiable noise sources silent but only to the extent that such separate identifiable noises do not typically occur at the particular location and time of day.

- B. "Commercial purpose" means and includes the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, any goods or any services or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition or event or for the purpose of demonstrating such sound equipment.
- C. "dBA" means the decibel measurement that is a logarithmic indication of the ratio between the acoustic energy present at a given location and the lowest amount of acoustic energy audible to sensitive human ears and weighted by frequency to account for characteristics of human hearing, as set forth in the American National Standards Institute Standard S1.1, "Acoustic Technology," paragraph 2.9, or successor reference.
- G.D. "Decibel" means a unit which is one-tenth of a dimensionless unit for expressing the ratio of two values of a power, the number of those dimensionless units being the logarithm to the base ten of the power ratio.
- D.E. "Emergencies" means essential activities necessary to restore, preserve, protect or save lives or property from imminent danger, loss or harm.
- E.F. "Noise level" means the maximum continuous noise level, sound level or repetitive peak level produced by a source or group of sources as measured with a precision sound level meter using the "A" weighting scale, and the meter response function set to "slow."
- F.G. "Noncommercial purpose" means the use, operation or maintenance of any sound equipment for other than a commercial purpose. The term "noncommercial purpose" means and includes, but shall not be limited to, philanthropic, political, patriotic and charitable purposes.
- G.H. "Type 2 general purpose sound level meter" means a device for measuring sound levels in decibel units within the performance specifications in the American National Standards Institute Standard S1.4, "Specification for Sound Level Meters" or successor reference.
- H.I. "Property plane" means a vertical plane, including the property line, which determines the property boundaries in space of the parcel of property over

or from which the sound in question is audibly transmitted.

- I.J. "Receiver" means a person or persons who question the level of sound transmitted from an identifiable source.
- J.K. "Sound-amplifying equipment" means any machine or device for the amplification of the human voice, music or any other sound. This does not include standard automobile radios, stereos, or other sound-amplifying equipment installed in the vehicle when used or heard only by the occupants of the vehicle in which the vehicular sound-amplifying equipment is installed. The term "sound-amplifying equipment," as used in this chapter, shall not include warning devices on authorized emergency vehicles or horns or other warning devices of any vehicle used only for traffic safety purposes.
- K. "Sound level," expressed in decibels (dB), means a logarithmic indication of the ratio between the acoustic energy present at a given location and the lowest amount of acoustic energy audible to sensitive human ears and weighted by frequency to account for characteristics of human hearing, as given in the American National Standards Institute Standard S1.1, "Acoustic Technology," paragraph 2.9, or successor reference. All references to dB in this chapter utilize the A-level weighted scale, abbreviated dBA, measured as set forth in this chapter.
- L. "Vehicle" means any device by which any person or property may be propelled, moved, driven or drawn upon a public street or highway or on any private property.

#### **§ 8.28.030 Noise levels for residential zoning districts.**

- A. No person shall cause, produce, suffer or allow to be produced by any machine, animal or device or any combination of same, in a single-family residential zoning district, a noise level more than ten (10) dBA above the local ambient to any receiver for a cumulative period of more than ~~fifteen~~ ten (1510) minutes in any hour, ~~or a noise level more than twenty (20) dBA above the local ambient to any receiver for a cumulative period of more than three (3) minutes in any hour, or a noise level more than thirty (30) dBA above the local ambient to any receiver.~~
- B. No person shall cause, produce, suffer or allow to be produced by any machine, animal or device or any combination of same, in a multi-family residential zoning district, a noise level more than ten (10) dBA above the local ambient three (3) feet from any wall, floor or ceiling inside any dwelling unit on the same property, except within the dwelling unit in which the noise source or sources may be located to any receiver for a cumulative period of more than ~~fifteen~~ ten (4510) minutes in any hour, ~~or a~~

noise level more than twenty (20) dBA above the local ambient to any receiver for a cumulative period of more than three (3) minutes in any hour, or a noise level more than thirty (30) dBA above the local ambient to any receiver.

#### **§ 8.28.040 Noise level for commercial and industrial zoning districts.**

No person shall cause, produce, suffer or allow to be produced by any machine, animal or device or any combination of same, in any commercial or industrial zoning district, a noise level more than ten (10) dBA above the local ambient to any receiver for a cumulative period of more than ~~fifteen~~ ten (10) minutes in any hour, ~~or~~ a noise level more than twenty (20) dBA above the local ambient to any receiver for a cumulative period of more than three (3) minutes in any hour, or a noise level more than thirty (30) dBA above the local ambient to any receiver.

#### **§ 8.28.070 Amplified Sound**

- A. It shall be unlawful for any person, other than personnel of law enforcement or governmental agencies, to install, use or operate within the city a loudspeaker or sound-amplifying equipment in a fixed or movable position or mounted upon any sound truck for the purpose of giving instructions, directions, talks, addresses, lectures or transmitting music to any persons or assemblages of persons in or upon any street, alley, sidewalk, park or public property or any open space generally available to the public, without first filing a registration statement and obtaining approval thereof as set forth in this section.
- B. Every user of sound-amplifying equipment shall file a registration statement with the planning director fifteen (15) days prior to the date on which the sound-amplifying equipment is intended to be used, which statement shall contain the following information:
  - 1. The name, address and telephone number of both the owner and the user of the sound equipment; the date or dates proposed and the hours of operation;
  - 2. The maximum sound-producing power of the sound-amplifying equipment which shall include the wattage to be used, the volume in decibels of sound to be produced, the approximate distance for which sound will be audible from the sound-amplifying equipment and a general description of the sound amplifying equipment to be used;
  - 3. The license and motor number if a sound truck is to be used;

4. Whether such equipment will be used for commercial or noncommercial purposes.
- C. The planning director shall return to the applicant an approved certified copy of the registration statement unless he/she finds that:
1. The conditions of the motor vehicle movement are such that in the opinion of the planning director, use of the equipment would constitute a detriment to traffic safety; or
  2. The conditions of pedestrian movement are such that use of the equipment would constitute a detriment to traffic safety; or
  3. The registration statement required reveals that the applicant would violate the provisions of this chapter or any other provision of this code or any other ordinance of the city.
- D. In the event the registration statement is disapproved, the planning director shall endorse upon the statement his/her reason for disapproval and return it forthwith to the applicant.
- E. Prior to the issuance of the registration statement, the applicant shall pay to the city a fee together with a deposit in such amounts as established from time to time by resolution of the city council. Such portion of the deposit as is not used or expended by the city in defraying the cost of monitoring noise produced by such activity or otherwise enforcing this chapter, shall be returned to the applicant at the expiration of such permit.
- F. The commercial and noncommercial use of sound-amplifying equipment shall be subject to the following regulations:
1. The only sounds permitted shall be either music or human speech or both.
  2. Except on Sundays and legal holidays, the operation of sound amplifying equipment shall only occur between the hours of eight (8:00) a.m. and seven (7:00) p.m. On Sundays and legal holidays, the operation of sound-amplifying equipment for commercial purposes shall only occur between the hours of nine (9:00) a.m. and four (4:00) p.m., with no time limitation as to noncommercial amplification other than as may be required by F 5 of this subsection.
  3. The ~~sound-noise~~ level emanating from sound-amplifying equipment shall not exceed fifteen (15) ~~decibels~~ dBA above the local ambient base noise level to any receiver.
  4. Sound-amplifying equipment shall not be operated within two hundred feet of any church, school or hospital.
  5. In all events the volume of sound and the hours of operation shall be so controlled that the sound will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal

sensitivity within the area of audibility.

- G. When the amplified sound is to be conducted in a public park, the provisions of Section 8.28.060 of this code shall also be applicable, the noise level standards of Section 8.28.060 having precedence over the standards set forth in subsection F of this section. Application for a group use permit of public park facilities under applicable Parks and Recreation Department guidelines and policies under Section 8.28.020 of this code shall also constitute the registration statement required under this section.

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Terry O'Connell, Mayor

ATTEST:

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Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:



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Teresa L. Stricker, Deputy City Attorney